



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 08-75

March 6, 2009

Order Instituting a Rulemaking pursuant to G.L. c. 30A, § 2 and 220 C.M.R. §§ 2.00 et seq. to Implement the Net Metering Provisions of An Act Relative to Green Communities, St. 2008, c. 169, § 78 and to Amend 220 C.M.R. §§ 8.00 et seq., Qualifying Facilities and On Site Generating Facilities, and 220 C.M.R. §§ 11.00 et seq., Electric Industry Restructuring.

ORDER INSTITUTING RULEMAKING

I. INTRODUCTION

On July 2, 2008, Governor Patrick signed into law Chapter 169 of the Acts of 2008, an Act Relative to Green Communities (“Green Communities Act”). The Green Communities Act requires the Department of Public Utilities (“Department”) to adopt rules and regulations necessary to implement provisions relating to net metering. St. 2008, c. 169, § 78. The Department institutes this rulemaking for the purpose of implementing the net metering provisions of the Green Communities Act.

II. IMPLEMENTING NET METERING

A. Introduction

Prior to the enactment of the Green Communities Act, net metering was available in the Commonwealth pursuant to (1) 220 C.M.R. §§ 8.00 et seq., Sales of Electricity by Qualifying Facilities and On-site Generating Facilities to Distribution Companies, and Sales of Electricity by Distribution Companies to Qualifying Facilities and On-site Generating Facilities and (2) 220 C.M.R. §§ 11.00 et seq., Rules Governing the Restructuring of the Electric Industry. In adding sections 138 through 140 to G.L. chapter 164, the Green Communities Act requires the Department to amend these net metering regulations by, among other things, (1) expanding the capacity of wind, solar and agricultural facilities eligible for net metering from 60 kilowatts to two megawatts and (2) adding a new category of net metering eligibility for neighborhoods. G.L. c. 164, §§ 138-40. To implement the net metering provisions of the Green Communities Act, the Department proposes regulations contained in 220 C.M.R. §§ 18.00 et seq. (“Proposed Regulations”). In addition, the Department proposes to amend 220 C.M.R. §§ 8.00 et seq. and 220 C.M.R. §§ 11.00 et seq. (“Revised Regulations”) to be consistent with

the Green Communities Act's net metering provisions.¹ The Proposed Regulations are attached to this Order as Attachment A and the Revised Regulations are attached to this Order as Attachment B (220 C.M.R. §§ 8.00 et seq.) and Attachment C (220 C.M.R. §§ 11.00 et seq.).

B. Procedural History

The Department conducted a technical conference on October 30, 2008, to discuss issues associated with implementing the net metering provisions of the Green Communities Act. The Department also accepted written comments in connection with the technical conference. The Department thanks all the participants who took the time and effort to assist us in better understanding these net metering provisions. The oral and written comments we received have informed the development of the Proposed Regulations and our general approach to implementing net metering.

C. General Approach

The Department recognizes that Distribution Companies,² Customers and interested persons seek clarity and guidance on how the Department intends to implement net metering. In addition, the Department recognizes the value of implementing net metering in a manner that is sufficiently flexible to adjust as practical experience dictates.

The Department will implement the net metering provisions of the Green Communities Act through regulations and tariffs. The Proposed Regulations set forth the broad parameters of net metering, but cannot address every aspect of net metering contained in the Green

¹ In the Revised Regulations, the Department also makes several minor corrections, which were omitted from our recent rulemaking in D.P.U. 07-105 (2008).

² Unless the context otherwise requires, capitalized terms used in this Order have the meanings provided in the Proposed Regulations.

Communities Act. Thus, in addition to the regulations proposed today, the Department will establish additional details associated with the provision of net metering services through Department-approved tariffs. These tariffs, the structure and content of which will be developed in a separate docketed proceeding opened concurrently with this rulemaking,³ will allow for additional flexibility in implementing net metering and addressing changing circumstances. The Department intends to issue a model net metering tariff concurrent with the issuance of the final net metering regulations and to require that each Distribution Company thereafter submit an individual conforming tariff. The Department's goal is to enable Distribution Companies to provide net metering services as soon as possible after the issuance of the final regulations.

D. Scope of Issues to be Addressed in Model Net Metering Tariff

The model net metering tariff will set forth the rights and obligations of Distribution Companies and Customers. It will govern such matters as metering and technical requirements; the type of information that Distribution Companies may require in a request for net metering services; and the administration of net metering credits, including the details associated with the designation and purchase of such credits. For a more comprehensive discussion of the scope of the issues to be addressed in the model net metering tariff, please refer to the Department's Order opening an investigation into these issues in D.P.U. 09-03, which was issued concurrently with this Order on March 6, 2009.

³ The Department has docketed the investigation into developing net metering tariffs as D.P.U. 09-03.

III. PROPOSED REGULATIONS

A. Overview

The Green Communities Act changes how net metering may occur in the Commonwealth. In addition to expanding the eligible capacity of certain renewable net metering facilities and creating Neighborhood Net Metering Facilities, the Green Communities Act changes the price components for calculating credits associated with excess generation for most net metering facilities and allows those credits to be allocated to other Customers of the interconnected Distribution Company. G.L. c. 164, §§ 138-40. In drafting the Proposed Regulations, the Department has generally followed the language of the Green Communities Act, unless we determined that further clarification was required as set forth below.

B. Clarifications

1. Introduction

The purpose of this section is to explain and clarify certain provisions set forth in the Proposed Regulations. In so doing, we hope to inform and focus the comments of interested persons.

2. Metering of Facilities

The Proposed Regulations include a new term “Host Customer,” which is used by the Department to establish a clear difference between Neighborhood Net Metering Facilities and Class I, II and III Net Metering Facilities with regard to the use of meters.⁴ With respect to Class I, II and III Net Metering Facilities, the term “Host Customer” requires these facilities to be located on a Customer’s premises and to flow their generation through that Customer’s

⁴ The definition of “Host Customer” is set forth in section 18.02 of the Proposed Regulations.

meter. Linking generation from the net metering facility to consumption by the Customer through the Customer's meter is consistent with the Green Communities Act. In G.L. c. 164, § 139, excess generation for Class I, II, and III Net Metering Facilities is calculated in any given billing period as the difference between the electricity generated by the facility and "the customer's kilowatt-hour usage." G.L. c. 164, §§ 139(a)(1), (b)(1). This provision ties the calculation of excess generation to the Customer's consumption of electricity, which can only be achieved if the generation from the net metering facility flows through the Customer's meter.

With respect to Neighborhood Net Metering Facilities, the term "Host Customer" requires these facilities to have their own independent meter through which their generation flows. In contrast to Class I, II and III Net Metering Facilities, excess generation for a Neighborhood Net Metering Facility is calculated in any given billing period as the difference between the electricity generated by the facility and "its kilowatt-hour usage." G.L. c. 164, § 140 (emphasis added). This provision ties the calculation of excess generation to the Neighborhood Net Metering Facility's consumption of electricity, rather than a Customer's consumption. This result can only be achieved if the Neighborhood Net Metering Facility has its own independent meter through which its generation flows.

3. Neighborhood Net Metering Facilities

a. Definition of Neighborhood

The Green Communities Act defines the term "neighborhood" as "a geographic area including and limited to a unique community of interests that is recognized as such by residents of such area and which, in addition to residential and undeveloped properties, may encompass commercial properties." G.L. c. 164, § 138. The Green Communities Act specifically

requires the Department to define further the term “neighborhood” and to limit the number of Customers that the Neighborhood Net Metering Facilities may designate to receive neighborhood net metering credits. Id. at § 140(b).

To satisfy these directives, the Proposed Regulations limit a Neighborhood to the boundaries of a municipality.⁵ The Department concludes that this limitation appropriately balances the need to provide clarity to Distribution Companies, Customers, and any other interested entities regarding the geographic qualifications for a Neighborhood, with the need to maintain sufficient flexibility to allow neighborhood net metering to develop. We also conclude that this limitation appropriately restricts the number of customers who may receive neighborhood net metering credits. While we recognize that limitation of this definition to the boundaries of a municipality could in certain instances limit the applicability of neighborhood net metering where otherwise a “unique community of interests” exists, the Department would have the ability to review such matters on a case-by-case basis under the exception clause contained in Section 18.09(5) of the Proposed Regulations.

b. Calculation of Neighborhood Net Metering Credits

The Green Communities Act specifies the rate components that are to be used in calculating net metering credits and requires, in particular, using “the default service kilowatt-hour charge in the ISO-NE load zone where the customer is located.” See G.L. c. 164, § 138 (defining net metering credits). For Class I, II, and III Net Metering Facilities, it is clear that net metering credits must be calculated using the rate class applicable to the Host

⁵ This requirement is contained in the definition of “Neighborhood” in section 18.02 of the Proposed Regulations.

Customer. For a Neighborhood Net Metering Facility, which must be independently metered, the applicable rate class is not readily apparent.

The Proposed Regulations, therefore, clarify that neighborhood net metering credits will be calculated based upon the residential rate class applicable to at least one of the residential Customers participating in the Neighborhood Net Metering Facility.⁶ The use of a single residential rate class⁷ to calculate these credits recognizes the Green Communities Act's focus on residential Customers, will ease the administrative burden that might otherwise fall upon Distribution Companies, and satisfies the rate design objective of simplicity. The net metering tariffs will address the manner in which Host Customers with respect to a Neighborhood Net Metering Facility will designate the applicable residential rate class to Distribution Companies.

4. Regulatory Treatment

Section 139(e) of G.L. chapter 164 states that “a Class I, II or III net metering facility or net metering customer shall not be: an electric utility, generation company, aggregator, supplier, energy marketer or energy broker, within the meaning of those terms as defined in sections 1 and 1F.” To implement G.L. c. 164, § 139(e), the Proposed Regulations state that Distribution Companies shall not provide net metering services to a Host Customer who is an electric company, generation company, aggregator, supplier, energy marketer, or energy broker, as those terms are used in G.L. c. 164, §§ 1, 1F.⁸ The Proposed Regulations make the

⁶ This requirement is contained in section 18.04(4) of the Proposed Regulations.

⁷ We mean to distinguish this choice from one involving a blend of rates, to the extent that a facility's participants take service under different rate classes.

⁸ This requirement is contained in section 18.06 of the Proposed Regulations.

Distribution Companies responsible for determining compliance with this provision because it is the relationship between Distribution Companies and Customers that is being regulated. In addition, the Proposed Regulations use the term “electric company” instead of “electric utility” to be consistent with the Department’s standard definition of electric company in other sections of its regulations. Finally, the Proposed Regulations refer to how these terms are used, as opposed to defined, in G.L. c. 164, §§ 1, 1F, to be consistent with the Department’s standard use of these terms in other sections of its regulations.

5. Net Metering Reports

The Proposed Regulations include provisions requiring Distribution Companies to track participation and trends in net metering.⁹ Tracking this information serves two purposes. First, obtaining information regarding the extent of participation in net metering is necessary to evaluate the program’s success in promoting renewable energy in the Commonwealth. Second, this information will provide the Department and others with information regarding when a Distribution Company is approaching the one percent limit on net metering capacity set forth in G.L. c. 164, § 139(f). Through its review of net metering reports, the Department will be able to monitor the progress of and issues related to net metering and consider whether adjustments to the net metering tariffs are warranted in light of experience to date.

6. Renewable Energy Credits

The Proposed Regulations clarify that Renewable Energy Credits associated with the generation of a net metering facility are the property of the owner of the facility.¹⁰

⁹ This requirement is contained in section 18.08 of the Proposed Regulations.

¹⁰ This requirement is contained in section 18.09(1) of the Proposed Regulations.

IV. SOLICITATION OF COMMENTS

The Department solicits general comments on the Proposed Regulations and Revised Regulations and on the specific issues raised by the Department in this Order. Interested persons may present, for the Department's consideration in adopting final regulations, facts, opinions, arguments, alternative regulations, or suggested hearing questions. The Proposed Regulations are attached to this Order as Attachment A and the Revised Regulations are attached to this Order as Attachment B (220 C.M.R. §§ 8.00 et seq.) and Attachment C (220 C.M.R. §§ 11.00 et seq.). A copy of the Proposed Regulations and Revised Regulations may be inspected at the Department's offices, One South Station, Boston, Massachusetts. In addition, electronic filings are available on the Department's website:

<http://www.mass.gov/dpu>.

To provide opportunity for comment, the Department will conduct a public hearing pursuant to G.L. c. 30A, §§ 2 and 4, and 220 C.M.R. § 2.05. The hearing will take place on Monday, **April 27, 2009**, from 10:00 a.m. to 5:00 p.m., at the Division of Insurance Hearing Room, Fifth Floor, One South Station, Boston, Massachusetts. Any person interested in commenting on this matter may appear at the public hearing or submit written comments to the Department. Persons who wish to submit written comments prior to the public hearing must file the comments no later than 5:00 p.m. Tuesday, **April 14, 2009**. Following the public hearing, written reply comments must be filed no later than 5:00 p.m. on Monday, **May 4, 2009**.

An original and one (1) copy of all written documents must be filed with Mary L. Cottrell, Secretary, Department of Public Utilities, One South Station, 2nd Floor, Boston,

Massachusetts 02110. All documents exceeding 20 pages in length must contain an executive summary.

All documents should also be submitted to the Department in electronic format using one of the following methods: (1) by e-mail attachment to dpu.efiling@state.ma.us and Shaela.Collins@state.ma.us or (2) on a 3.5" disk or CD-ROM. The text of the e-mail, disk label, or CD-ROM must specify: (1) the docket number of the proceeding (D.P.U. 08-75), (2) name of the person or company submitting the filing, and (3) a brief descriptive title of the document. The electronic filing should also include the name, title and telephone number of a person to contact in the event of questions about the filing. The Department strongly encourages filers to avoid submitting scanned files but will accept them for posting when an alternative version does not exist in electronic format. In addition, if the petitioner, applicant, or any other participant has already filed a document relevant to this proceeding, such as the initial petition, application, or filing, without providing an electronic copy of that document, such entity is directed to do so in compliance with the above electronic filing requirements as soon as practicable. All documents submitted in electronic format will be posted on the Department's website: <http://www.mass.gov/dpu>.

By Order of the Department,

/s/

Paul J. Hibbard, Chairman

/s/

W. Robert Keating, Commissioner

/s/

Tim Woolf, Commissioner